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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 BRENDA JOHNSON,

9 Plaintiff,

10 v.

11 WASHINGTON STATE DEPARTMENT OF
12 TRANSPORTATION, et al.,

13 Defendants.

CASE NO. C19-862RSM

ORDER

14 This matter is before the Court on Plaintiff's "Motion to Objection dkt 23, dkt 26, Motion
15 to Reopen, and Motion New Trial." Dkt. #30. On August 23, 2019, the Court dismissed
16 Plaintiff's case because, even presuming that it adequately asserted a claim for relief, it appeared
17 clearly barred by the applicable statutes of limitation and by Plaintiff's prior unsuccessful
18 litigation. Dkt. #22 (further noting that while alerted of the apparent deficiencies, Plaintiff did
19 nothing to address or remedy them). Plaintiff concurrently sought reconsideration and appealed
20 to the United States Court of Appeals for the Ninth Circuit. Dkts. #27 and #28. Shortly
21 thereafter, Plaintiff filed the pending Motion. Dkt. #30. After the Court denied Plaintiff's motion
22 for reconsideration (Dkt. #31), the Ninth Circuit Court of Appeals held the appeal in abeyance
23 until after resolution of the pending Motion. Dkt. #32. The Court now denies the pending
24 Motion.

1 Plaintiff's Motion invokes only Federal Rule of Civil Procedure 60. Dkt. #30 at 3. Under
2 Rule 60, the Court may grant relief from a final judgment or order "for the following reasons:"

- 3 (1) mistake, inadvertence, surprise, or excusable neglect;
- 4 (2) newly discovered evidence that, with reasonable, could not have been
discovered in time to move for a new trial under Rule 59(b);
- 5 (3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation,
or misconduct by an opposing party;
- 6 (4) the judgment is void;
- 7 (5) the judgment has been satisfied, released, or discharged; it is based on an
earlier judgment that has been reversed or vacated; or applying it prospectively is
no longer equitable; or
- 8 (6) any other reason that justifies relief.

9 FED. R. CIV. P. 60(b).

10 Plaintiff premises her Motion "upon newly found evidence." Dkt. #30 at 1. However, if
11 Plaintiff did in fact identify or present new evidence, the Court is unable to identify it. FED. R.
12 CIV. P. 60(b)(2). To the extent Plaintiff does present new evidence, she makes no showing that
13 the evidence is of "such magnitude that production of it earlier would have been likely to change
14 the disposition of the case." *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th
15 Cir. 2003) (quotation marks and citation omitted). Still further, Plaintiff makes no effort to
16 explain why her "new evidence" could not have been discovered earlier with reasonable
17 diligence. *Id.* As Plaintiff has entirely failed to satisfy the requirements of Rule 60(b), Plaintiff's
18 Motion is denied.

19 Arguably, the caption of Plaintiff's Motion may also invoke Rule 59. Dkt. #30 at 1
20 (including "Motion New Trial" in the caption). But even so, Plaintiff's Motion should be denied:

21 "A Rule 59(e) motion may not be used to raise arguments or present evidence for
22 the first time when they could reasonably have been raised earlier in the
litigation." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal
23 citation omitted); *see also McQuillion v. Duncan*, 342 F.3d 1012, 1013 (9th Cir.
2003); *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc) (a
24 Rule 59(e) motion "should not be granted, absent highly unusual circumstances,
unless the district court is presented with newly discovered evidence, committed

clear error, or if there is an intervening change in the controlling law.”) (internal quotations omitted).

Garcia v. Biter, 195 F. Supp. 3d 1131, 1132–33 (E.D. Cal. 2016). Plaintiff’s Motion does nothing to attempt to satisfy these requirements. To the extent Plaintiff’s Motion merely seeks reconsideration, the Court has already denied a motion seeking reconsideration (Dkt. #31) and will not entertain successive motions.

Plaintiff's Motion fails to justify the relief she seeks. Accordingly, and having considered Plaintiff's Motion and the record herein, the Court finds and ORDERS that Plaintiff's "Motion to Objection dkt 23, dkt 26, Motion to Reopen, and Motion New Trial" (Dkt. #30) is DENIED.

Dated this 29 day of October, 2019.

W. J. S.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE